

In the Supreme Court of the State of Idaho

IN RE: AMENDMENTS TO IDAHO)
RULES OF CIVIL PROCEDURE (I.R.C.P.))

ORDER

The Court, having reviewed amendments to the Idaho Rules of Civil Procedure, including those necessitated by the statewide adoption of the Idaho Rules of Family Law Procedure, and having approved those amendments:

NOW, THEREFORE, IT IS HEREBY ORDERED that the Idaho Rules of Civil Procedure as they appear in the volume published by the Idaho Code Commission be, and they are hereby, amended as follows:

1. That Rule 1(a) be, and the same is hereby, amended as follows:

Rule 1(a). Scope of rules.

These rules govern the procedure and apply uniformly in the district courts and the magistrate's divisions of the district courts in the state of Idaho in all actions, proceedings and appeals of a civil nature whether cognizable as cases at law or in equity, including probate proceedings and proceedings in which a judge pro tempore is appointed pursuant to Idaho Court Administrative Rule 4; except that certain proceedings in the magistrate's division involving family law and the Domestic Violence Crime Prevention Act are governed by the Idaho Rules of Family Law Procedure as set forth in IRFLP 101 and proceedings in the small claims department are governed by these rules only as provided by Rule 81. All references in these rules to the court or district court shall include the magistrate's division, and all references to judges or clerks shall include magistrates and their clerks and a judge pro tempore appointed pursuant to Idaho Court Administrative Rule 4, except as referred to in Rules 81, 82 and 83. These rules shall be liberally construed to secure the just, speedy and inexpensive determination of every action and proceeding.

2. That Rule 3(a) be, and the same is hereby, amended as follows:

Rule 3(a). Commencement of action.

~~(1) A civil action is commenced by the filing of a complaint, petition or application with the court. Any filing party shall be designated as the plaintiff or petitioner, and any party against whom the same is filed shall be designated as the defendant or respondent. Complaints, petitions or applications shall be filed with a completed Supreme Court approved case information sheet in the following civil cases: including divorce, custody, paternity, modification, guardianship, conservatorship, adoption, termination of parental rights, protection orders, involuntary commitment, and child protection act. This case information sheet shall be exempt from disclosure according to I.C.A.R. 32. No claim, controversy or dispute, may be submitted to any court in the state for determination or judgment without filing a complaint or petition or application as provided in these rules; nor shall any judgment or decree be entered by any court without service of process upon all parties affected by such judgment or decree in the manner prescribed by these rules.~~

~~(2) Commencement of a protection order proceeding. An action for a domestic violence protection order may not be filed unless accompanied by information in whatever form required by the court to allow entry of the protection order into the Idaho Law Enforcement Telecommunications System (to be transferred by the court to the appropriate law enforcement agency with any signed order). A copy of this sheet shall not be maintained in the court file. Such action may be commenced or defended on behalf of a minor as set forth in I.R.C.P. 17(c).~~

3. That Rule 6(c)(2) be, and the same is hereby, amended as follows:

Rule 6(c)(2). Order to show cause (other than contempt matters) - Affidavits.

(A) All applications for an order to show cause must be accompanied by an affidavit or supported by a verified complaint setting forth the facts and grounds upon which the application is based. If the court finds that an application makes a prima facie showing for an order commanding a person to do or refrain from doing specific acts or to pay a sum of money, the court shall enter an order to show cause to the opposing party to comply with the request or show cause before the court at a time and place certain why such order should not be entered. An order to show cause must be served upon the party to whom it is directed, or the party's attorney of record in the action, at least five (5) days prior to the date of the show cause hearing in the same manner as a notice for hearing of a motion under these rules. If the party to whom the order to show cause is directed opposes the entry of the order, the court shall hear the show cause proceeding. ~~The order to show cause procedure may not be used to seek a modification of a decree of divorce with respect to child support or custody.~~ Any proceeding for contempt must be brought pursuant to Rule 75.

4. That Rule 6(c)(5) be, and the same is hereby, REPEALED in its entirety.

5. That Rule 6(c)(6) be, and the same is hereby, REPEALED in its entirety.

6. That Rule 6(c)(7) be, and the same is hereby, REPEALED in its entirety.

7. That Rule 8(d) be, and the same is hereby, amended as follows:

Rule 8(d). Effect of failure to deny.

Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading; ~~except those necessary to sustain an action for divorce.~~ Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

8. That Rule 16(a) be, and the same is hereby, REPEALED in its entirety, and a NEW RULE 16(a) ADOPTED as follows:

Rule 16(a). Scheduling conferences and scheduling orders.

Within 30 days after an answer or notice of appearance has been filed, or, within 90 days after a complaint has been filed, if one or more defendants have been served but no appearance has been made, a court shall take action, by setting a scheduling conference, requesting available trial dates, or by another method within the discretion of the presiding judge, which results in the filing of a scheduling order as soon as practicable after the action taken by the court. The scheduling order shall address, but is not limited to the following matters:

- (1) the setting of date(s) for trial and any pre-trial conferences;
- (2) the setting of deadlines for joining other parties and amending the pleadings; for filing and hearing dispositive motions; for completing discovery; and, for disclosing expert witnesses;
- (3) the advisability of ordering mediation or ADR;
- (4) the need for a special master where appropriate; and
- (5) any other matter which would aid in the speedy, fair and efficient disposition of the case.

The dates set by the court in section (1) above shall not be modified except by leave of the district judge or magistrate upon a showing of good cause. The dates and deadlines set forth within the scheduling order pursuant to section (2) above shall not be modified except by leave of the district judge or magistrate upon a showing of good cause or by stipulation of all the parties and approval of the court.

9. That Rule 16(b) be, and the same is hereby, REPEALED in its entirety, and a NEW RULE 16(b) ADOPTED as follows:

Rule 16(b). Final pre-trial procedure.

At least thirty (30) days before trial, the court shall engage in a pretrial process, which may include a formal pretrial conference, a pretrial memorandum submitted by the parties, pretrial submissions by stipulation of the parties, or other methods within the discretion of the presiding judge, by which the parties are required to confirm that the matter is proceeding to trial in the manner required by the court's scheduling order. If a formal pretrial conference is held, the court shall require at least one attorney for each party participating in the pretrial conference to have authority to enter into stipulations and to make admissions regarding all matters that may be reasonably anticipated. If a formal pretrial conference is held, it shall be on the record and any rulings of the court shall be reflected in a minute entry prepared as ordered by the court. Subjects of consideration at the pretrial conference may include but are not limited to:

- (1) the status of mediation or ADR;
- (2) the disposition of any pending motions;
- (3) the possibility of obtaining admissions of fact and stipulations regarding the authenticity of exhibits, and the advisability of any advanced rulings from the court concerning the admissibility of evidence;
- (4) the avoidance of unnecessary proof and of cumulative evidence;
- (5) the necessity of amendments to the pleadings pursuant to Rule 15(b);
- (6) the formulation and simplification of the issues to be presented at trial, including the elimination of abandoned or unsustainable claims and defenses;
- (7) the identification of witnesses and exhibits;
- (8) the pre-marking of exhibits and procedures for the handling of exhibits, in conformance with Idaho Court Administrative Rule 71;
- (9) jury instructions and jury selection issues;
- (10) the need for an interpreter as provided in Idaho Court Administrative Rule 52 for any party or witness;
- (11) the need for pre-trial briefing, and filing deadlines, if necessary; and
- (12) any other matter which would aid in the fair and efficient resolution of the case.

10. That Rule 16(j) be, and the same is hereby, REPEALED in its entirety.

11. That Rule 16(k) be, and the same is hereby, amended as follows:

Rule 16(k). Mediation of civil lawsuits.

(1) Definition of Mediation. Mediation under I.R.C.P. 16(kj) is the process by which a neutral mediator appointed by the Court or agreed to by the parties assists the parties in reaching a mutually acceptable agreement. The role of the mediator is to aid the parties

in identifying the issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and finding points of agreement. An agreement reached by the parties is to be based on the decisions of the parties, and not the decisions of the mediator,

(2) Matters Subject to Mediation. All civil cases ~~other than child custody and visitation disputes~~ are eligible for referral to mediation under this subsection. ~~Child custody and visitation disputes shall be mediated pursuant to I.R.C.P. 16(j).~~

(5) Selection of the Mediator. The parties shall have twenty-eight (28) days from entry of the mediation order, or such other time as the court may allow, to select any person to act as mediator and report their selection to the court. If the parties do not select a mediator within twenty-eight (28) days, then the court shall appoint a mediator from the judicial district's list of mediators maintained pursuant to I.R.C.P. 16(k)(13)(A).

12. That Rule 16(l) be, and the same is hereby, REPEALED in its entirety.

13. That Rule 16(m) be, and the same is hereby, REPEALED in its entirety.

14. That Rule 16(o) be, and the same is hereby, REPEALED in its entirety.

15. That Rule 16(p) be, and the same is hereby, REPEALED in its entirety.

16. That Rule 16(q) be, and the same is hereby, REPEALED in its entirety.

17. That Rule 24(d) be, and the same is hereby, REPEALED in its entirety.

18. That Rule 40(d)(1) be, and the same is hereby, amended as follows:

Rule 40(d)(1). Disqualification without cause.

(I) **Exceptions.** Notwithstanding the above provisions, the right to disqualification without cause shall not apply to:

- (i) A judge when acting in an appellate capacity, from another court unless the appeals is a trial de novo;
- (ii) A judge in a post-conviction proceeding, when that proceeding has been assigned to the judge who entered the judgment of conviction or sentence being challenged by the post-conviction proceeding.
- (iii) A judge who has been appointed by the Supreme Court to preside over a specific civil action.
- ~~(iv) A judge hearing petitions to modify child custody orders or child support orders entered by that same judge in an earlier proceeding.~~

19. That Rule 55(b)(1) be, and the same is hereby, amended as follows:

Rule 55(b)(1). Default judgment by the court or clerk.

When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the court or the clerk thereof, upon request of the plaintiff, and upon the filing of an affidavit of the amount due showing the method of computation, together with any original instrument evidencing the claim unless otherwise permitted by the court, shall enter judgment for that amount and costs against the defendant, if the defendant has been defaulted for failure to appear and if the defendant is not an infant or incompetent person, and has been personally served, other than by publication or personal service outside of this state. Any application for a default judgment must contain written certification of the name of the party against whom judgment is requested and the address most likely to give the defendant notice of such default judgment, and the clerk shall use such address in giving such party notice of judgment. ~~An application for default judgment in a divorce or annulment action must be accompanied by a certificate furnished by the department of vital statistics fully filled out by the party seeking the default divorce or annulment.~~

20. That Rule 55(b)(2) be, and the same is hereby, amended as follows:

Rule 55(b)(2). Default judgment by the court - persons exempt from.

In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's

representative) shall be served with written notice of the application for judgment at least three (3) days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper. ~~In actions for divorce, the statutes of the state of Idaho shall apply.~~ Any application for a default judgment must contain written certification of the name of the party against whom the judgment is requested and the address most likely to give the party notice of such default judgment, and the clerk shall use such address in giving such party notice of judgment.

21. That Rule 58(a) be, and the same is hereby, amended as follows:

Rule 58(a). Entry of judgment.

Subject to the provisions of Rule 54(b): (1) upon a general verdict of a jury, or upon a decision by the court that a party shall recover only a sum certain or costs or that all relief shall be denied, the court shall sign the judgment and the judgment shall be entered by the judge or clerk; (2) upon a decision by the court granting other relief, or upon a special verdict or a general verdict accompanied by answers to interrogatories, the court shall approve the form and sign the judgment, and the judgment shall be entered by the judge or the clerk. Every judgment and amended judgment shall be set forth on a separate document as required in Rule 54(a). The filing of a judgment by the court as provided in Rule 5(e) or the placing of the clerk's filing stamp on the judgment constitutes the entry of the judgment; and the judgment is not effective before such entry. The entry of the judgment shall not be delayed for the taxing of costs. ~~The entry of judgment shall not be made in a divorce or annulment action unless and until the prevailing party furnishes to the clerk a completed certificate of divorce or annulment on a form furnished by the department of vital statistics. In addition, entry of judgment shall not be made as to any decree that contains the obligation for one party to pay child support unless and until it is accompanied by the completed transmittal form to the Department of Health and Welfare.~~

22. That Rule 60(c) be, and the same is hereby, REPEALED in its entirety.

23. That Rule 65(g) be, and the same is hereby, REPEALED in its entirety.

24. That Rule 77(b) be, and the same is hereby, amended as follows:

Rule 77(b). Trials and hearings.

All trials upon the merits of every court of justice shall be conducted in open court and so far as convenient in a regular courtroom; except that in an action for a ~~divorce, annulment~~, criminal conversation, seduction, a civil protection order or breach of promise of marriage, the court may exclude all persons from the courtroom except the officers of the court, the parties, their witnesses, and counsel, provided that in any cause the court may exclude witnesses as provided in the Idaho Rules of Evidence. All trials or hearings of any court held before a judge or magistrate assigned thereto, and all judgments and orders issued by such courts shall be deemed to have been done in open court regardless of the place held. In the discretion of the court, any hearing except a trial or evidentiary hearing may be held outside the county in which the action was filed or transferred for change of venue. By stipulation of the parties, a trial or evidentiary hearing may be held outside the county in which the action was filed or transferred for change of venue. A minute entry shall be made by the clerk of the court under the direction of the court of all court proceedings and filed in the official file of the action.

IT IS FURTHER ORDERED, that this order and these amendments shall be effective the 1st day of July, 2015.

IT IS FURTHER ORDERED, that the Clerk of the Court shall cause notice of this Order to be published in one issue of *The Advocate*.

DATED this 9th day of March, 2015.

By Order of the Supreme Court

R. Burdick

Roger S. Burdick, Chief Justice

ATTEST: Stephen Kenyon
Clerk

Stephen W. Kenyon, Clerk of the Supreme Court
the State of Idaho, do hereby certify that the
above is a true and correct copy of the Order
entered in the above entitled cause and now on
record in my office.

WITNESS my hand and the Seal of this Court 3/12/15

STEPHEN W. KENYON

Clerk

By: Kimberly Grove Deputy